



COLORADO

Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

January 21, 2016

Gary Erickson, Registered Agent
Golden Eagle Excavating, Inc.
13540 Meadowgrass Drive, Suite 200
Colorado Springs, CO 80921

Certified Mail Number: 7014 2870 0000 7699 5870

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-160120-1

Dear Mr. Erickson:

Golden Eagle Excavating, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO upon findings that Golden Eagle Excavating, Inc. has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Golden Eagle Excavating, Inc. is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.



Should you or representatives of Golden Eagle Excavating, Inc. desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Eric Mink by phone at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



Eric T. Mink, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Tom Gonzales, El Paso County Public Health
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Mike Harris, Compliance & Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Rik Gay, Clean Water Compliance Unit, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-160120-1

IN THE MATTER OF: GOLDEN EAGLE EXCAVATING, INC.
CDPS PERMIT NO. COR-030000
CERTIFICATION NO. COR-03K091
EL PASO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, Golden Eagle Excavating, Inc. ("Golden Eagle Excavating") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Golden Eagle Excavating is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Golden Eagle Excavating initiated construction at the Bass Pro at Northgate Filing No. 1 Project with a planned disturbance area of approximately 59 acres of land at or near 39°1'40.8" N and 104°49'33.6" W, in El Paso County, Colorado (the "Project").
4. Construction activities at the Project include ground disturbing activities associated with commercial development.
5. On January 22, 2013, the Division received an application from Golden Eagle Excavating for Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
6. On January 29, 2013, the Division provided Golden Eagle Excavating with Certification Number COR-03K091 authorizing Golden Eagle Excavating to discharge stormwater from the construction activities associated with the Project to waters of the State of Colorado, including but not limited to Monument Branch, under the terms and conditions of the Permit. Certification Number COR-



03K091 became effective January 29, 2013 and was set to expire on June 30, 2012, but has been administratively continued pending Permit reissuance.

7. The Monument Branch is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
8. Pursuant to 5 CCR 1002-61, §61.8, Golden Eagle Excavating must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
9. On June 12, 2015, a representative from the Division (the “Inspector”) conducted an on-site inspection of the Project pursuant to the Division’s authority under §25-8-306, C.R.S., to determine Golden Eagle Excavating’s compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Project representatives, reviewed the Project’s stormwater management system records and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

10. Pursuant to Part I.B. of the Permit, Golden Eagle Excavating is required to prepare and maintain a Stormwater Management Plan (“SWMP”) in accordance with good engineering, hydrologic and pollution control practices. The SWMP is required to identify all potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the plan is required to describe and ensure the implementation of Best Management Practices (“BMPs”) at the Project, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
11. Pursuant to Part I.C. of the Permit, the Project’s SWMP shall include, at a minimum, the following items:
 - a. Site Description - The SWMP shall clearly describe the construction activity, including:
 - i. The nature of the construction activity.
 - ii. The proposed sequence for major activities.
 - iii. Estimates of the total area of the site and the area of the site that is expected to undergo clearing, excavation or grading.
 - iv. A summary of any existing data used in the development of the construction plans or SWMP that describe the soil or existing potential for soil erosion.
 - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
 - vi. The location and description of all potential pollution sources, including ground surface disturbance, vehicle fueling, storage of fertilizers or chemicals, etc.
 - vii. The location and description of any allowable sources of non-stormwater discharge, such as springs, landscape irrigation return flow, construction dewatering and concrete washout.
 - viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

- b. Site Map - The SWMP shall include a legible site map(s), showing the entire site, identifying:
- i. Construction site boundaries.
 - ii. All areas of ground surface disturbance.
 - iii. Areas of cut and fill.
 - iv. Areas used for storage of building materials, equipment, soil or waste.
 - v. Locations of dedicated asphalt or concrete batch plants.
 - vi. Locations of all structural BMPs.
 - vii. Locations of all non-structural BMPs.
 - viii. Locations of springs, streams, wetlands and other surface waters.
- c. Stormwater Management Controls - The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:
- i. SWMP Administrator - The SWMP shall identify a specific individual(s), position or title that is responsible for developing, implementing, maintaining and revising the SWMP.
 - ii. Identification of Potential Pollutant Sources - The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
 - iii. BMPs for Stormwater Pollution Prevention - The SWMP shall identify and describe appropriate BMPs that will be implemented at the facility to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.
- (1) Structural Practices for Erosion and Sediment Control - The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions and temporary or permanent sediment basins.
 - (2) Non-Structural Practices for Erosion and Sediment Control - The SWMP shall clearly describe and locate all non-structural practices implemented at the site to minimize erosion and sediment transport. Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.
 - (3) Phased BMP Implementation - The SWMP shall clearly describe the relationship between the phases of construction and the implementation and maintenance of BMPs. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing, road construction, utility and infrastructure installation, vertical construction, final grading and final stabilization.
 - (4) Materials Handling and Spill Prevention - The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff.

- (5) Dedicated Concrete or Asphalt Batch Plants - The SWMP shall clearly describe and locate BMPs to control stormwater pollution from dedicated concrete batch plants or dedicated asphalt batch plants.
 - (6) Vehicle Tracking Control - The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.
 - (7) Waste Management and Disposal, Including Concrete Washout - The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.
 - (8) Groundwater and Stormwater Dewatering - The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.
- d. Final Stabilization and Long-Term Stormwater Management - The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.
- e. Inspection and Maintenance - The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices and other protective practices in good and effective operating condition.
12. During the June 12, 2015 inspection, the Inspector reviewed the Project's SWMP and identified that the SWMP did not clearly identify all items required by Part I.C. of the Permit, as described in Paragraphs 12(a-n) below:
- a. The site description section of the SWMP failed to include the proposed sequence of all major activities at the Project, including but limited to the installation of the sanitary sewer line or the development of the fill area to the south.
 - b. The site description section of the SWMP failed to include an acreage estimate that included the installation of the sanitary sewer line or the development of the fill area to the south.
 - c. The site description section of the SWMP failed to identify the existing vegetation or the estimated percent of vegetative cover at the Project.
 - d. The site description section of the SWMP failed to identify all potential pollutant sources and their locations at the Project, including but not limited to the ground surface disturbing activities.
 - e. The site description section of the SWMP failed to identify all the anticipated sources and locations of allowable non-stormwater discharge at the Project, including but not limited to the occurring dewatering operation.
 - f. The site description section of the SWMP failed to identify the size, type and location of all the outfalls at the Project, including but limited to the impoundment outfall.
 - g. The SWMP site map failed to identify all construction site boundaries at the Project, including but limited to the construction of the sanitary sewer.
 - h. The SWMP site map failed to identify all areas of ground surface disturbance at the Project, including but not limited to the impoundment area.
 - i. The SWMP site map failed to identify all areas of cut and fill at the Project, including but not limited to the southern fill area.
 - j. The SWMP site map failed to identify the locations of stored materials, equipment,

stockpiles or wastes at the Project, including but not limited to the demolition waste south of the jobsite trailer.

- k. The SWMP site map failed to identify all the structural control measures being used at the Project, including but not limited to the control measures associated with the dewatering activities.
 - l. The stormwater management controls section of the SWMP failed to identify all the non-structural control measures being used at the Project, including but not limited to vegetative buffers.
 - m. The stormwater management controls section of the SWMP failed to describe installation and implementation specifications for all control measures being used at the Project, including but not limited to diversion ditch/berms and sediment basins.
 - n. The final stabilization and long-term stormwater management section failed to provide the practices used to achieve final stabilization at the Project.
13. The Division has determined that Golden Eagle Excavating failed to prepare and maintain a complete and accurate SWMP for the Project.
14. Golden Eagle Excavating's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violation(s) of Part I.B. and Part I.C. of the Permit.

Failure to Perform and/or Document Inspections of Stormwater Management System

15. Pursuant to Part I.D.6.a. of the Permit, for active sites where construction has not been completed, Golden Eagle Excavating is required to make a thorough inspection of the Project's stormwater management system at least every 14 calendar days.
16. Pursuant to Part I.D.6.b.2. of the Permit, inspection reports must include a signed statement indicating that corrective action(s) have been taken and the site is in compliance with the Permit.
17. Pursuant to Part I.D.8. of the Permit, where site inspections note the need for BMP maintenance, the repair, replacement or installation of new BMPs must be addressed as soon as possible, immediately in most cases, to minimize the discharge of pollutants.
18. During the June 12, 2015 inspection, the Inspector reviewed the available inspection records for the Project for the period from August 4, 2014 - June 10, 2015. The Inspector determined that Golden Eagle Excavating failed to perform an inspection of the stormwater management system at least once every 14 calendar days for timeframes listed in the table below.

Project Area	Inspection Date	Previous Inspection Date	Days Between Inspections
Lot 2 Bass Pro	11/3/2014	9/16/2014	17
Lot 2 Bass Pro	12/23/2014	12/23/2014	56
Lot 2 Bass Pro	3/18/2015	3/18/2015	41
Copper Ridge Crossing	11/3/2014	10/3/2014	31
Copper Ridge Crossing	12/1/2014	11/3/2014	30
Copper Ridge Crossing	12/29/2015	12/1/2014	28
Copper Ridge Crossing	1/27/2015	12/29/2014	29
Copper Ridge Crossing	2/23/2015	1/27/2015	27
Copper Ridge Crossing	3/23/2015	2/23/2015	28

Copper Ridge Crossing	4/20/2015	3/23/2015	28
Bass Pro Crossing	9/10/2014	8/13/2014	28
Bass Pro Crossing	1/2/2015	12/3/2014	30
Bass Pro Crossing	1/30/2015	1/2/2015	28
Bass Pro at Northgate	12/2/2014	11/4/2014	28
Bass Pro at Northgate	12/30/2014	12/2/2014	28
Bass Pro at Northgate	1/27/2015	12/30/2014	28
Bass Pro at Northgate	3/24/2015	1/27/2015	56
Bass Pro at Northgate	4/21/2015	3/24/2015	28
Northgate Plaza Filing 3	6/9/2015	5/22/2015	18
Magnum Shooting Center	9/1/2014	8/4/2014	29
Magnum Shooting Center	10/27/2014	9/29/2014	29
Magnum Shooting Center	11/13/2014	10/27/2014	17
Magnum Shooting Center	12/10/2014	11/13/2014	17
Magnum Shooting Center	1/7/2015	12/10/2014	28

19. During the June 12, 2015 inspection, the Inspector reviewed the available inspection records and determined that Golden Eagle Excavating failed to meet the compliance statement requirements for each inspection by not completing compliance certifications, in accordance with Part I.D.6.b.2. of the Permit.
20. During the June 12, 2015 inspection, the Inspector reviewed the available inspection records and determined that Golden Eagle Excavating failed to include the dates when all identified corrective actions were completed, in accordance with Part I.D.8. of the Permit.
21. Golden Eagle Excavating's failure to properly perform and document inspections of the Project's stormwater management system constitutes violation(s) of Parts I.D.6.a., I.D.6.b.2. and I.D.8. of the Permit.

Failure to Install, Maintain, or Properly Select Best Management Practices

22. Pursuant to Part I.C.3.c. of the Permit, Golden Eagle Excavating is required to implement BMPs to reduce the potential of pollution sources from contributing pollutants to stormwater discharges, including minimizing erosion and sediment transport from the Project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions and temporary or permanent sediment basins. The Permit specifies that non-structural site management practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees and preservation of mature vegetation.
23. Pursuant to Part I.D.2. of the Permit, Golden Eagle Excavating is required to select, design, install, implement and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. The BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.
24. Pursuant to Part I.B.3. of the Permit, Golden Eagle Excavating is required to implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.

25. During the June 12, 2015 inspection, the Inspector identified the following deficiencies related to BMP installation and maintenance at the Project, as described in Paragraphs 25(a-r) below:

- a. The Inspector observed silt fence control measures along the south portion of the retail area north of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically:
- Silt fence along a slope was not installed with checks or J-hooks to prevent concentrated flows, per industry standards, resulting in observed concentrated flow and erosion.
 - Silt fence installed with joints that were not wrapped, allowing bypass of pollutants.
 - Silt fence not attached to posts, allowing bypass of pollutants.
 - Silt fence collapsed, resulting in observed bypass of pollutants.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on the identified inadequate silt fences to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- b. The Inspector observed silt fence control measures west of the CB & Potts restaurant in the retail area south of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically:
- Silt fence was installed in an area of concentrated flows, resulting in exceedance of silt fence capacity.
 - The contributing area exceeded the industry standard of ¼ acre per 100 linear feet of silt fence.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on the identified inadequate silt fences to ensure effectiveness. Stormwater from this area of the Project flows south in to a small detention basin, which discharges in to an unnamed tributary of Monument Branch.

- c. The Inspector observed silt fence control measures in the Sanitary Sewer Area of project that were not implemented and/or maintained according to good pollution control practices. Specifically:
- Silt fence was not installed along the edge of the diversion channel.
 - The contributing area exceeded the industry standard of ¼ acre per 100 linear feet of silt fence.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on the identified inadequate silt fences to ensure effectiveness. Stormwater from this area of the Project flows west and collects in the Powers Boulevard extension, where it is diverted in a drainage channel to a small detention basin that discharges to an unnamed tributary of Monument Branch.

- d. The Inspector observed silt fence control measures in the Project Discharge Area at the south portion of the Project that were not implemented and/or maintained according to good pollution control practices. Specifically:

- Silt fence along a slope was not installed with checks or J-hooks to prevent concentrated flows, per industry standards, resulting in observed concentrated flow and erosion.
- Silt fence was installed in an area of concentrated flows, resulting in exceedance of silt fence capacity.
- Silt fence collapsed, resulting in observed bypass of pollutants.

No additional control measures were implemented down gradient of this Project area. Stormwater from this Project area flows in to an unnamed tributary of Monument Branch.

- e. The Inspector observed an inlet protection control measure in the retail area north of the job trailer that was not implemented according to good pollution control practices. Specifically, the inlet protection was installed so that it did not prevent bypass of sediment through grooves underneath the control measure.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- f. The Inspector observed sediment control log control measures in the retail area north of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically:
 - Sediment control log control measures exceeded the accumulation industry standard, which states that debris must be removed when fifty (50) percent of the capacity of a control measure has been utilized.
 - Sediment control log control measures showed signs of tearing and damage, preventing the control measure from functioning properly.
 - Sediment control log control measures were not entrenched per industry standards, which state that sediment control logs must be entrenched a minimum of two (2) inches.
 - Sediment control log control measures were not staked per the industry standard, which states that stakes should be used every twenty-four (24) inches at ninety (90) degrees to each other, resulting in bypass of pollutants.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- g. The Inspector observed sediment control log control measures in the retail area southeast of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically:
 - Sediment control log control measures showed signs of tearing and damage, preventing the control measure from functioning properly.
 - Sediment control log control measures were not staked per the industry standard, which states that stakes should be used every twenty-four (24) inches at ninety (90) degrees to each other, resulting in bypass of pollutants.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness.

Stormwater from this area of the Project flows into the storm sewer inlets and into detention basins which discharge to Smith Creek, or south in to a small detention basin, which discharges in to an unnamed tributary of Monument Branch.

- h. The Inspector observed sediment control log control measures in the area south of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically, sediment control log control measures exceeded the accumulation industry standard, which states that debris must be removed when fifty (50) percent of the capacity of a control measure has been utilized.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows through an eroded channel, to an in-line sediment basin that discharges to the southern fill area and in to an unnamed tributary of Monument Branch.

- i. The Inspector observed sediment control log control measures in the Sanitary Sewer Area of project that were not implemented and/or maintained according to good pollution control practices. Specifically, Sediment control log control measures were not entrenched per industry standards, which state that sediment control logs must be entrenched a minimum of two (2) inches.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on the identified inadequately installed sediment control logs to ensure effectiveness. Stormwater from this area of the Project flows west and collects in the Powers Boulevard extension, where it is diverted in a drainage channel to a small detention basin that discharges to an unnamed tributary of Monument Branch.

- j. The Inspector observed sediment control log control measures in the Project Discharge Area at the south portion of the Project that were not implemented and/or maintained according to good pollution control practices. Specifically, sediment control log control measures exceeded the accumulation industry standard, which states that debris must be removed when fifty (50) percent of the capacity of a control measure has been utilized.

No additional control measures were implemented down gradient of this Project area. Stormwater from this Project area flows in to an unnamed tributary of Monument Branch.

- k. The Inspector observed that control measures in the retail area north of the job trailer that were not implemented to manage stormwater runoff. Specifically, no control measures were implemented along the roads, despite significant erosion being visible.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- l. The Inspector observed that control measures in the retail area southeast of the job trailer that were not implemented to manage stormwater runoff. Specifically:
 - No control measures were implemented along the road, between the disturbed area and the flow line.

- No control measures were implemented along the perimeter of the disturbed area.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this area of the Project flows in to the storm sewer inlets and in to detention basins which discharge to Smith Creek, or south in to a small detention basin, which discharges in to an unnamed tributary of Monument Branch.

- m. The Inspector observed that control measures were not implemented to manage pollutant contributions from concrete waste located on the east side of Bass Pro Drive.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- n. The Inspector observed that control measures were not implemented to manage pollutant contributions from concrete waste located in the dewatering area.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this area of the Project flows west and collects in the Powers Boulevard extension, where it is diverted in a drainage channel to a small detention basin that discharges to an unnamed tributary of Monument Branch.

- o. The Inspector observed a vehicle tracking control measure at the construction entrance off of Bass Pro Drive that was not implemented and/or maintained according to good pollution control practices. Specifically, the tracking pad had become impacted with sediment and needed to be refreshed to ensure effectiveness.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this Project area flows into the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- p. The Inspector observed that a straw wattle and silt fence control measure combination in the retail area southeast of the job trailer was inadequate to manage stormwater runoff and sediment. Specifically, the contributing area significantly exceeded the industry standard of ¼ acre per 100 linear feet of silt fence, resulting in gully erosion and sediment bypass.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend on up gradient control measures to ensure effectiveness. Stormwater from this area of the Project flows in to the storm sewer inlets and into detention basins, which discharge to Smith Creek.

- q. The Inspector observed that control measures in the area south of the job trailer were not implemented to manage pollutant contributions to stormwater from construction materials. Specifically:

- A large waste storage yard was observed without any control measures in place.
- A fueling station marked “diesel” was observed with leaks and spills from the hose.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend up gradient control measures to ensure effectiveness. Stormwater from this Project area flows through a run-on drainage channel to a small temporary sediment basin that discharges to the southern fill area and in to an unnamed tributary of Monument Branch.

- r. The Inspector observed inadequate control measures in the area of the Project south of the job trailer that were not implemented and/or maintained according to good pollution control practices. Specifically:
- The sides of the drainage channels were not stabilized to prevent erosion.
 - The sediment basin lacked the industry standard volume of 3,600 cubic feet per acre of drainage area, which allows adequate detention time to facilitate sediment deposition prior to discharge.

Additional control measures were implemented down gradient of this Project area but these additional control measures depend up gradient control measures to ensure effectiveness. Stormwater from this Project area flows to an impoundment outfall and in to an unnamed tributary of Monument Branch.

26. The Division has determined that Golden Eagle Excavating failed to implement and/or maintain functional BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic and pollution control practices.
27. Golden Eagle Excavating's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I.C.3.c., Part I.D.2. and Part I.B.3. of the Permit.

NOTICE OF VIOLATION

28. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Golden Eagle Excavating has violated the following sections of the Permit:

Part I.B. of the Permit, which states in part, "The SWMP shall be prepared in accordance with good engineering, hydrologic and pollution control practices. ... The SWMP shall: a) Identify all potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the facility; b) Describe the practices to be used to reduce the pollutants in stormwater discharges associated with construction activity at the facility; and ensure the practices are selected and described in accordance with good engineering practices, including the installation, implementation and maintenance requirements; and c) Be properly prepared and updated in accordance with Part I.D.5.c., to ensure compliance with the terms and conditions of this permit."

Part I.C. of the Permit, which states in part, "The SWMP shall include the following items, at a minimum."

Part I.D.6.a. of the Permit, which states in part, "The permittee shall, at a minimum, make a thorough inspection, in accordance with the requirements in I.D.6.b. below, at least once

every 14 calendar days ... For sites or portions of sites that meet the following criteria, but final stabilization has not been achieved due to vegetation cover that has not become established, the permittee shall make a thorough inspection of their stormwater management system at least once every month."

Part I.D.6.b.2. of the Permit, "After adequate corrective actions(s) has been taken, ... the report shall contain a signed statement indicating the site is in compliance with the permit to the best of the signer's knowledge and belief."

Part I.D.8. of the Permit, which states in part, "Where BMPs have failed, resulting in noncompliance with Part I.D.2., they must be addressed as soon as possible, immediately in most cases, to minimize discharge of pollutants."

Part I.C.3.c. of the Permit, which outlines in part that BMPs for Stormwater Pollution Prevention shall address erosion and sediment control, including "structural practices implemented at the site to minimize erosion and sediment transport" and "non-structural practices implemented at the site to minimize erosion and sediment transport," as well as phased BMP implementation, materials handling and spill prevention, dedicated concrete or asphalt batch plants, vehicle tracking control, waste management and disposal, including concrete washout, and groundwater and stormwater dewatering.

Part I.D.2. of the Permit, which states, "Facilities must select, install, implement, and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity to prevent pollution or degradation of State waters."

Part I.B.3. of the Permit, which states in part, "Facilities must implement the provisions of the SWMP as written and updated, from commencement of construction activity until final stabilization is complete, as a condition of this permit."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Golden Eagle Excavating is hereby ordered to:

29. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Golden Eagle Excavating to comply with the following specific terms and conditions of this Order:

30. Golden Eagle Excavating shall immediately evaluate the Project's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit and is effective in managing pollutant discharges from the Project. Within thirty (30) calendar days of receipt of this Order, Golden Eagle Excavating shall submit a written certification to the Division stating that a complete, effective and up-to-date SWMP has been fully developed and implemented at the Project.
31. Golden Eagle Excavating shall immediately begin conducting and documenting inspections of the

Project's stormwater management system pursuant to the provisions outlined in the Permit. Within thirty (30) calendar days of receipt of this Order, Golden Eagle Excavating shall submit a written certification to the Division stating that all such inspections are being conducted and documented in accordance with the terms and conditions of the Permit.

32. Golden Eagle Excavating shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Project. This includes ensuring that all disturbed areas at the Project are stabilized and/or protected with a system/series of erosion and sediment control practices, and that all BMPs at the site are selected, installed, implemented and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, Golden Eagle Excavating shall evaluate and modify all existing BMPs at the Project to ensure the BMPs meet the design requirements specified in the Project's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, Golden Eagle Excavating shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Project.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Golden Eagle Excavating shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CWE-B2
Attention: Eric Mink
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties or

duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 20th day of January, 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION

